



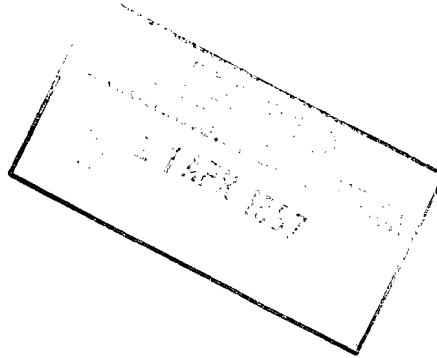
SCOTTISH COURT SERVICE  
Sheriffdom of Grampian, Highland and Islands  
Sheriff Clerk's Office  
Sheriff Court House  
The Castle  
Inverness  
IV2 3EG

Your reference

Our reference AN/SG/L2

Date 17 April 1997

[REDACTED]  
Assistand Manager  
The Scottish Legal Aid Board  
DX ED 250  
Edinburgh



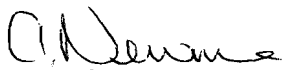
Dear Sir  
N N

[REDACTED] -v- [REDACTED] [REDACTED]

I have enclosed herewith a copy of my report following upon the diet of taxation heard on 30th March 1997 together with a copy of the account of expenses as taxed.

The audit fee of £140 should be made payable to the Sheriff Clerk and remitted in due course.

Yours faithfully

  
Mrs A Newman  
Sheriff Clerk Depute

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS  
AT INVERNESS

REPORT

by

AUDITOR OF COURT

on

ACCOUNT OF EXPENSES

incurred by

SCOTTISH LEGAL AID BOARD

in causa  
CN

residing at

PURSUER

against

DEFENDER

This account relates to expenses incurred by Gillian Stewart, Solicitor in her role as Curator ad Litem to the child in the aforementioned Court action.

A Report in the action was prepared by Mrs Stewart and an account of expenses made up and tendered to the Scottish Legal Aid Board for payment. The Board have as in the Walker case disputed the account particularly in relation to the precognition expenses and again requested that it be submitted for taxation under Regulation 12 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989. A Diet of Taxation was fixed for 20th March 1997 at 10.30 a.m. At the diet [REDACTED] appeared for the Scottish Legal Aid Board, Mrs Graham appeared for the Pursuers Solicitors and Mrs Stewart, Curator,

appeared for herself. The Curator and the Legal Aid Board adopted the representations put forward in the Walker case. The following additional submissions were also made.

Mrs Stewart went on to highlight that in this particular case, one of the witnesses she interviewed made a statement which had particular relevance to the case and which was required to be noted verbatim. This statement was of particular relevance in that she subsequently denied having made it at the Proof diet. She submitted that it was only the fact that this statement had been noted verbatim in her precognition that made it quite clear that that is what had been said and that that might not have been possible had she had to refer to scraps of hand written notes. She indicated that the Neish case was a particularly complex case and that it was essential for the Curator to have accurate notes to rely upon to enable the Curator to take accurate decisions in light of all the prevailing circumstances. She accepted that when interviewing adults it was appropriate to take notes and indeed it was often reassuring to the adults being interviewed that notes were being taken as that implied that what they were saying was important. It was not however the position when interviewing children as she felt it may distract the child if copious notes were being taken. After interviewing parties the Curator is required to make a decision as to whether to enter the proceedings, to do nothing or to prepare a Report and she considered it essential that in her role as Curator she was able to prepare precognitions if she saw fit especially since she may either be called as a witness herself or be placed in the position of having to examine witnesses called to Proof.

██████████ for the Scottish Legal Aid Board felt that there was no need for precognitions to be prepared until such time as the Curator made a conscious decision to enter process. If that decision was not made then precognitions would not be necessary. He indicated that the Board would concede to precognitions being relevant and necessary if a Curator decided to enter process and appear in Court. He stated that it was purely speculative to say that the Curator may enter process and that it was

only once a decision to enter process and appear in Court had been made that precognitions could be justified. Otherwise he considered it to be double charging and unreasonable.

Mrs Graham, Solicitor for the Pursuer indicated that she often also assumed the role of Curator in other proceedings and that she considered that a Curator must be able to make whatever decision was considered to be in the best interests of the child and that the preparation of precognitions undoubtedly assisted in how that role was exercised. She indicated that sometimes having obtained and prepared precognitions at an interim stage those precognitions could focus issues and assist in making early decisions in a process. She considered that the Curator should be entitled to act in the same manner as Solicitors for the Pursuers and Defenders and where appropriate obtain precognitions. She emphasised that the appointment of Curator was made to represent the best interest of the child and therefore there should be no restriction placed on how the Curator should act. There then followed some discussion as to the necessity of a Curator having to be sisted as a party to the proceedings following upon an appointment as there appeared to be some differences in practice throughout the Sheriffdom. She went on to say that a Curator who had decided not to enter process could be present at Proof simply out of interest and take no role. However if Legal Aid is granted to that Curator who is also a Solicitor, then it is understandable that the Curator having decided to actively intervene may require to take precognitions. Indeed she indicated that precognitions may be necessary in advance of that decision to allow the decision to be made.

The distinction between the role of Reporting Officer and Curator ad Litem was also canvassed and the practice in Inverness of Sheriffs now appointing Reporting Officers only in the first instance and thereafter looking at any report prepared and perhaps following the recommendations to subsequently appoint a Curator was accepted as being the current practice. It was however conceded by all parties that there was absolutely no dispute in this current case that Mrs Stewart had been appointed quite

correctly as a Curator. Mrs Graham went on to say that a Curator may not in all instances consider it necessary to prepare a precognition and in some occasions simply an attendance fee would be appropriate in that the information elicited at the interview would be of little significance and therefor a precognition would be of no benefit. She went on to state that since there was no challenge ever taken to Solicitors taking precognitions, Curators should similarly be allowed that discretion.

It was emphasised that the Neish case was a particularly complex one with substantial averments re sexual abuse which issues had been dealt with delicately by the Curator. This had enabled the Proof to be subsequently restricted. The Scottish Legal Aid Board enquired as to how focused the Report was from the precognitions prepared and how much of the Report was the Curators conclusions. Mrs Stewart indicated that the Report in this particular case summarised the precognitions and then concluded with three to four pages of conclusions along with some comments of her own throughout. It was accepted that the body of the Report did repeat the terms of many of the precognitions but focused also on the important parts of same and brought everything together. Mrs Stewart again emphasised that if a Curator decided only to prepare a Report and was thereafter called as a witness, she considered that it would be both necessary and beneficial for precognitions to be available as opposed to the Reporting Officer having to rely upon scrappy notes and her own memory. The Scottish Legal Aid Board submitted that it would be the responsibility of the Curator to take comprehensive notes at the time of the interview. Mrs Stewart countered that by saying that precognitions give a better account and not only a factual account but also include comments on the Curators impressions and feelings of what was being said during the interview. The Legal Aid Board emphasised that they considered that file notes should be sufficient. Mrs Graham at this point indicated that her practice was to type up a typewritten note for file because her handwriting wasn't particularly good and preparing precognitions allowed for the filtering out of unnecessary information from the file notes and the taking together of the salient parts of the interview.

In summary the Scottish Legal Aid Board stated that there should be no distinction made between the role of Reporting Officer or Curator ad Litem and since the roles could be performed by other lay persons who would not consider preparing precognitions, then, the changes made for preparing and copying precognitions should be disallowed.

Mrs Stewart did not agree with this submission and re-emphasised that the preparation of precognitions were necessary to allow the Curator to focus on the issues and prepare a full report or decide whether or not to enter process.

I would refer to my report in the case of Walker -v- Walker and to the decision which I made in that case. I think that the decision also can be applied to this particular case and again I have deleted the costs in respect of precognition.

It is my view that once a Curator ad Litem decides to enter process the cost of preparing precognitions would be a valid charge. This is not the position in this case where legal aid was refused and the Curator did not enter process or appear at Proof. As is alluded to in the Walker case there may be other factors justifying the extension of the Curator's notes e.g. complexity and in this case Mrs Stuart specifically mentioned the allegation made by a witness. However since the allegation was noted in detail at the time and a full interview was then carried out I do not consider that factor alone to justify extension of the notes since the allegation had already been fully and accurately recorded.

  
Audrey Newman

Auditor of Court, Inverness

ACCOUNT OF EXPENSES

INCURRED BY

MRS. G. STUART,  
MESSRS. SUTHERLAND & CO.,  
SOLICITORS, INVERNESS

In Causa

[REDACTED]

(AP)

CN

PURSUER

AGAINST

[REDACTED]

KN

DEFENDER

SHERIFF  
CLERK'S OFFICE  
- 4 MAR 1997  
INVERNESS

1995

Oct	31	Writing the Sheriff Clerk advising the writer has been appointed Curator <u>ad Litem</u> but we understand the defender has raised custody proceedings under a separate "A" number and these actions have been conjoined and requesting they forward a copy of the Writ or the Record		7.20
Nov	3	Perusing papers received from the defender's solicitors - 8 sheets		14.30
		Writing defender's solicitors acknowledging and noting		1.05
		Perusing Record received from the Sheriff Clerk Depute - 5 sheets		14.30
	7	Writing pursuer's solicitors advising we have received copies of the Processes but do not appear to have received copies of any productions lodged		1.05
			£	0.00
				37.90

		£	0.00	37.90
1995				
Nov	17	Perusing Legal Aid Certificates received from Anderson MacArthur & Co.		14.30
Nov	23	Perusing further papers received from the Sheriff Clerk Depute - 9 sheets - engaged 30 mins		28.60
		Attendance travelling to John O'Groats to interview pursuer and [REDACTED], also interviewing your cohabitee and [REDACTED] - engaged 9½ hours to include travelling time		543.40
		Paid travelling expenses - 245 miles	98.00	
		Framing Precognition of [REDACTED] - 16 pages		<del>115.20</del>
		Extending and copy - 32 sheets		<del>47.04</del>
	24	Attendance travelling to Skye to interview the child and the child's grandparents - engaged 9½ hours - qualified		543.40
		Paid travelling expenses - 240 miles	96.00	
		Paid Skye Toll Bridge (£4.30 per crossing) - 2 crossings	8.60	
		Framing Precognition of [REDACTED] - 8 pages		<del>57.60</del>
		Framing Precognition of [REDACTED] - 2 pages		<del>14.40</del>
		Extending and copy Precognitions - 10 shs each		<del>14.70</del>
	27	Attendance at telephone with [REDACTED] leaving message		3.00
Dec	5	Writing [REDACTED] advising we require to discuss matters with him as soon as possible, requesting confirmation when he intends to return to Skye failing which we can telephone him in Newcastle		1.05
		Attendance obtaining Precognition from [REDACTED] - 10 mins - qualified		14.30
		Framing Precognition of [REDACTED] - 2 pages		<del>14.40</del>
		Extending and copy - 2 sheets		<del>2.94</del>
		£	202.60	<del>1,452.23</del> 1185.95



1995

£

202.60

1185 95  
~~1,452.23~~

Dec	5	Attendance at telephone with [REDACTED] taking details for his Precognition - engaged 1hr - qualified	56.80
		Framing Precognition of [REDACTED] - 9 pages	<del>64.80</del>
Dec	5	Perusing further papers received from pursuer's solicitors - 25 sheets - engaged 1hr	56.80
		Attendance at telephone with the Reporter's Office noting they were investigating the allegations against [REDACTED] - engaged 10 mins	7.20
		Attendance at telephone with [REDACTED] of the Social Work Department leaving message	3.00
		Attendance at telephone with the school leaving message for [REDACTED]	3.00
		Attendance at telephone with Anderson MacArthur leaving message	3.00
		Attendance at telephone with MacLeod & MacCallum leaving message	3.00
		Attendance at telephone with Raigmore Hospital noting [REDACTED] was in Ward 5B at present	3.00
		Attendance at telephone with Anderson MacArthur requesting confirmation what was meant by disturbed behaviour	3.00
	6	Writing [REDACTED] advising we have not yet heard from their son and requesting to hear from them	1.05
		Writing MacLeod & MacCallum acknowledging and noting	1.05
	11	Writing Anderson MacArthur advising the writer will not be attending Court tomorrow, enclosing copy letter sent to the Court which fully explains the position, advising we are concerned to note that [REDACTED] has been displaying disturbed behaviour since the writer's visit and further thereon	7.20

£

202.60

1,665.13

1384-05

1995

£

202.60

1334-05  
~~1,665.13~~

Dec

11

Writing MacLeod & MacCallum advising the writer will not be attending Court tomorrow and enclosing fax sent to the Court

1.05

Writing the Sheriff Clerk referring to the writer's appointment as Curator ad Litem, advising the writer is not in a position to attend Court as the Report has not yet been completed, advising detailed Statements have been taken from the pursuer and the defender's parents and we have discussed matters in detail with the defender by telephone, referring to the pursuer's original Minute of Amendment, advising we have been in touch with the Reporter to the Children's Panel, giving full details thereon, advising we have also received intimation from the pursuer's solicitors that they have made an application to the Court on behalf of their client for interim access and advising we have been in touch with both parties' solicitors - 6 pages

43.20

Attendance at telephone with Duncan Bird discussing regarding letter sent to the Sheriff Clerk's Department

3.00

Perusing copy Motion received from MacLeod & MacCallum

7.20

20

Writing Anderson MacArthur acknowledging receipt of their recent fax, advising we will not be available for 27th December but their client should telephone the writer at her home telephone number

1.05

28

Attendance with [REDACTED] and his girlfriend discussing case, noting he was not happy about the terms of the Report already lodged in Court and discussing fully thereon - engaged 1hr 30mins - qualified

85.80

1996

Jan

9

Writing the Sheriff Clerk referring to our fax dated 11th December, advising we have now spoken to [REDACTED] and are in the process of completing a Supplementary Report, advising we would wish to discuss matters further with [REDACTED] prior to completion of the Report, advising we understand although access took place over the Christmas/

£

202.60

~~1,806.43~~

1475.35

1996

£

202.60

1475 35  
~~1,806.43~~

Jan	9	period there were difficulties due to adverse weather conditions, advising we do not at this time have Legal Aid to cover attendance at a Proof Diet and further thereon - 2 pages	14.40
		Attendance at telephone with Scottish Legal Aid Board enquiring Legal Aid position	3.00
Jan	10	Attendance at telephone with the Reporter's Office noting they were not intending taking any further action	3.00
	23	Attendance at telephone noting [REDACTED] was presently at college	3.00
		Perusing Report previously lodged - 3 pages	14.30
Feb	2	Attendance at telephone with [REDACTED] taking details for their Precognitions - engaged 35 mins - qualified	42.90
		Framing Precognition of [REDACTED] - 2 sheets	<del>14.40</del>
		Framing Precognition of [REDACTED] - 4 sheets	<del>28.80</del>
		Extending and copy Precognitions - 6 sheets	<del>8.82</del>
		Attendance at telephone with [REDACTED] leaving message	3.00
		Attendance at telephone with [REDACTED] discussing case and taking details for her Precognition - engaged 30 mins - qualified	28.60
		Framing Precognition of [REDACTED] - 2 sheets	<del>14.40</del>
		Extending and copy - 2 sheets each	<del>2.94</del>
		Attendance at telephone with [REDACTED] advising we had sent a fax to him and he would look at his records and revert to ourselves	3.00
		Writing [REDACTED] referring to our recent telephone conversation, enclosing Mandate, advising we understand [REDACTED] has been in contact by telephone, advising the writer has been appointed/	

£

202.60

~~1,996.99~~

1590.55

		£	202.60	1590.55 <del>1,990.99</del>
1996				
Feb	2	by the Court to act as Curator and discussing fully thereon - 2 pages		14.40
		Framing Mandate		7.20
		Attendance at [REDACTED] taking details for his Precognition - engaged 30 mins - qualified		28.60
		Framing Precognition of [REDACTED] Fraser - 2 sheets		<del>14.40</del>
		Extending and copy - 2 sheets each		<del>2.94</del>
		Agency engaged preparing Report - engaged 2hrs - qualified		113.60
Feb	4	Agency further engaged preparing Report - engaged 3hrs - qualified		170.40
		Framing Report - 23 sheets		---
		Extending and 3 copies - 23 sheets each		53.13
		Signing Report		3.00
	5	Lodging Report		3.00
		Attendance at telephone discussing Report and explaining recommendations - engaged 10 mins		7.20
Feb	6	Attendance with [REDACTED] and her cohabitee taking further detailed Statement and discussing various new allegations contained in the Writ - engaged 2hrs - qualified		113.60
		Framing Supplementary Precognition of [REDACTED] - 7 pages		<del>50.40</del>
		Extending and copy - 7 sheets		<del>10.29</del>
		Agency engaged travelling to John O'Groats - engaged 6hrs 15mins - qualified		355.10
		Paid travelling expenses - 260 miles	104.00	
		Attendance at the surgery of [REDACTED] leaving Mandate with the receptionist and noting the doctor would contact the writer tomorrow - engaged 20 mins - qualified		28.60
		Framing Mandate		7.20
		£	306.60	2,974.05 2495.58

1996		£	306.60	2495.58 <del>2,974.05</del>
Feb	6	Attendance at telephone with [REDACTED], social worker, taking details for her Precognition - engaged 30 mins - qualified		28.60
		Framing Precognition of [REDACTED] - 2 sheets		<del>14.40</del>
		Extending and copy - 2 sheets		<del>2.94</del>
Feb	6	Writing the Sheriff Clerk advising the principal Report has been forwarded direct to Sheriff Fulton in Inverness and copies have been intimated to each party, advising we do not think it necessary for the writer to attend Court this morning and assume that a Proof will be fixed		7.20
		Writing pursuer's solicitors enclosing copy Report		1.05
Feb	6	Writing defender's solicitors enclosing copy Report		2.45
		Attendance at telephone with [REDACTED] previously on two occasions on 2nd February noting he was visiting [REDACTED] once a fortnight - 2 calls		6.00
	5	Attendance at telephone with [REDACTED] noting [REDACTED] was presently working in Newcastle - engaged 5 mins		7.20
		Perusing CCI received from the Scottish Courts Service		14.30
	8	Attendance at telephone with the Sheriff Clerk's Department noting a Proof had been fixed for 3rd and 4th April		3.00
	9	Writing Anderson MacArthur & Co. advising we have been attempting to contact their client in Newcastle to confirm that the writer is unable to travel to Skye tomorrow to meet with him and [REDACTED], discussing fully thereon and requesting they attempt to telephone [REDACTED] parents to advise them of the position		7.20
	13	Writing Anderson MacArthur & Co. acknowledging and noting		1.05
		Writing MacLeod & MacCallum advising we note a Proof has been fixed for 3rd and 4th April and requesting confirmation/		
		£	306.60	<del>3,069.44</del> 2573.63

1996			f	306.60	2573-63 <del>3,069.44</del>
Feb	13	whether access is going to take place prior to the Proof			1.05
		Attendance at telephone with [redacted] noting he was upset at the terms of the Report and discussing fully thereon			3.00
	20	Writing MacLeod & MacCallum acknowledging and noting			1.05
Mar	4	Writing the Sheriff Clerk referring to Motion which we understand has been lodged by the defender's agents, advising the writer has not lodged a form of opposition as she has not yet entered the Process, advising Legal Aid has been refused but we have written to the Board appealing their decision, advising we think it inappropriate for [redacted] to be moved from her current surroundings prior to the Proof, discussing fully thereon but advising the writer will not be able to attend Court tomorrow - 4 pages			28.80
Feb	25	Perusing list of witnesses received from defender's solicitors			14.30
Mar	5	Writing Anderson MacArthur & Co. acknowledging their letter dated 23rd May, advising Legal Aid is not available as when we applied for Legal Aid we sent a copy of the Court's Interlocutor but due to the way this was framed the Legal Aid Board has refused their application and discussing fully thereon			7.20
		Perusing Motion received from defender's solicitors			14.30
	8	Attendance at Inverness Sheriff Court when the defender's Motion and the pursuer's Motion called - engaged 20 mins - qualified			28.60
		Attendance discussing case with John Moir, Advocate prior to case calling - engaged 5 mins (charged in Court attendance)			---
		Perusing Motion received from pursuer's solicitors			14.30
			f	306.60	<del>3,182.04</del> 2686-23
		Add: Outlays			306.60
			f		<del>3,488.64</del>

1996

Mar 8

One-half of Report  
pursuer's solicitors

One-half payable  
solicitors

fee payable by

by defender's

9.

ALLOWANCE FOR GARA  
TIME TAKING, NOTES IN  
INTERVIEW - PRECIPITATIONS  
NOT ALLOWED

3144.83  
45-00

~~1,744.32~~

1,744.32

£ 3189.83

Inverness 14/4/97

I hereby certify that I have  
taxed the Baggins account in  
the sum of Three Thousand  
One Hundred and Eighty Nine  
Pounds 83 Pence (£3189.83) as  
per report attached

A. Newme  
Auditor of Court.